

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TENNESSEE
3 AT KNOXVILLE, TENNESSEE

4)
5 SNMP RESEARCH, INC. and SNMP)
6 RESEARCH INTERNATIONAL, INC.,)
7)
8 Plaintiffs,)
9)
vs.) Case No. 3:20-cv-451
10)
11 EXTREME NETWORKS, INC.,)
12)
13 Defendant.)
14)

15 **MOTION HEARING**
16 **BEFORE THE HONORABLE DEBRA C. POPLIN**

17 **Thursday, February 11, 2024**
18 **10:33 a.m. to 12:30 p.m.**

19 **APPEARANCES:**

20 **ON BEHALF OF THE PLAINTIFF:**

21 JOHN L. WOOD, ESQ.
22 EGERTON, MC AFEE, ARMISTEAD & DAVIS, PC
23 P.O. Box 2047
24 Knoxville, TN 37901-2047

25 **REPORTED BY:**

26 Teresa S. Grandchamp, RMR, CRR
27 P.O. Box 1362
28 Knoxville, Tennessee 37901
29 (865) 244-0454

APPEARANCES: (Continued)

ON BEHALF OF THE DEFENDANT:

SAURABH PRABHAKAR, ESQ.
DEBEVOISE & PLIMPTON, LLP
650 California Street
San Francisco, CA 94108
and
CHARLES B. LEE, ESQ.
MILLER & MARTIN, PLLC (Chattanooga)
832 Georgia Avenue
1200 Volunteer Building
Chattanooga, TN 37402

* * * * *

1 THE COURTROOM DEPUTY: All rise.

2 This court is again in session with the
3 Honorable Debra C. Poplin, United States Magistrate
4 Judge, presiding.

5 Please come to order and be seated.

6 We are here for a scheduled motion hearing in
7 Case No. 3:20-cv-451, SNMP Research, Inc. versus Extreme
8 Networks, Inc.

9 Here on behalf of the plaintiff is John Wood.

10 Is the plaintiff ready to proceed?

11 MR. WOOD: Yes.

12 THE COURTROOM DEPUTY: Here on behalf of the
13 defendant are Saurabh Prabhakar and Charles Lee.

14 Is the defendant ready to proceed?

15 MR. PRABHAKAR: Yes.

16 THE COURT: All right. Good morning to you
17 all.

18 So, it appears that we have several disputes
19 for plaintiff, as well as for the defendants. So I'm
20 just going to go in that order, and we will address the
21 plaintiffs' discovery disputes first.

22 So, let me start, Mr. Wood, with the first one.
23 It appears the parties resolved discovery dispute number
24 one. I just wanted a confirmation.

25 MR. WOOD: Your Honor, so, Extreme has produced

1 some source code. We don't -- from our examination, we
2 don't believe they've produced all the new source code,
3 and this was -- primarily Extreme is now contending that
4 they removed SNMP Research software from the source
5 code.

6 So, it appears they have produced one version,
7 I guess. So we can verify that. Our expert has now
8 looked at it. We've filed a report last week. He's
9 shown that our source code is still in those products,
10 and, so, we're going to need to see all the versions of
11 the source code because it's still being used in their
12 products.

13 THE COURT: Okay.

14 MR. WOOD: So, I guess I would say it's
15 partially resolved.

16 THE COURT: Okay. So, have you had discussions
17 since your expert has looked at that with Extreme as to
18 what additional information --

19 MR. WOOD: We have not --

10:34AM 20 THE COURT: -- you are seeking?

21 MR. WOOD: We have not yet.

22 THE COURT: Mr. Prabhakar, what would be your
23 response to that, I mean, hearing that they may need
24 some additional information since receiving the updated
25 information?

1 MR. PRABHAKAR: So, Your Honor, I have to admit
2 two things: One, you know, we've produced source code
3 long ago, so this is the first time I've heard that
4 something may be missing or they need something else.

5 But, as a matter of principle, I don't
6 understand what different versions are they talking
7 about because the products are different from the
8 software. There are many products, but there is one or
9 two flavors of software.

10:35AM 10 So if it's about versions of software, whatever
11 they need, I mean, we produced thousands, and we'll
12 produce whatever else there is. I don't think there is
13 a whole lot, so it should be easy enough to produce
14 that.

15 THE COURT: Okay. So it sounds like it would
16 be most efficient for you all to have a discussion,
17 hopefully immediately after this hearing, and clarify
18 what needs further information produced. So, I think
19 that -- I don't think I will be able to resolve that
10:35AM 20 until you all have a discussion. Hopefully you won't
21 reach an impasse. So, if you can, after the hearing,
22 just follow-up on that and see if you can get that one
23 resolved; okay?

24 MR. WOOD: Yes, Your Honor.

25 MR. PRABHAKAR: We're ready, hopefully, Your

1 Honor. This is not one we'll have to bother you with.

2 THE COURT: Okay. Thank you.

3 All right. The next dispute is the reopening
4 of Extreme's 30(b)(6) witness on the financial
5 documents.

6 So, I've read the position statements, and I
7 guess I'll turn to you, Mr. Wood. You're saying there
8 are new columns, there is new information you want an
9 explanation on, it may take an hour. But I do want you
10 to respond to defendant's position, which is that there
11 are two columns; one is not even populated and the other
12 appears to be a customer purchase order number, if
13 that's what it means.

14 MR. WOOD: Yes, Your Honor. I guess our
15 position is: We'd like to ask the witness about that.
16 So, for -- what we thought we were going to get was just
17 an update to the existing document. They produced a new
18 document with a couple of new columns. Since all of our
19 damages are based on those documents, we wanted to
20 confirm them again.

21 THE COURT: Let me ask you this: Are all the
22 other columns, except for these two, substantively the
23 same?

24 MR. WOOD: Yes.

25 THE COURT: Okay. So it's just these two

1 columns?

2 MR. WOOD: Right. That's my understanding.

3 THE COURT: And do you agree that one is not
4 populated?

5 MR. WOOD: I am not -- I have not personally
6 verified that.

7 THE COURT: Okay.

8 MR. WOOD: If they say it's not populated, then
9 it's not. We would still like to know, well, why did
10 they include an unpopulated column.

11 THE COURT: Okay.

12 MR. WOOD: What was the -- what was the
13 purpose? Should it be populated; is there information
14 there?

15 There may be an easy solution to this. So,
16 they have -- as a result of our last hearing, they have
17 agreed to put up a witness on Topic 18, which is a
18 financial topic, Anthony Hutchins, and he actually
19 helped prepare -- he worked on a lot of these
20 spreadsheets, and I think if Extreme is willing, then it
21 seems like it would be -- we could just question him.

22 THE COURT: And what was his name again?

23 MR. WOOD: Anthony Hutchins. And right now he
24 is scheduled, I believe -- they have agreed to put him
25 up for May 7th. We've asked to move that earlier, but

1 they have agreed to put up a witness for financial
2 topics.

3 And Mr. Hutchins works with Kaylee Freeman who
4 was the original witness. So we would be fine if we
5 could just ask him a few of these questions. We're
6 going to have to show him the spreadsheets anyway, so it
7 just seems like this probably -- now that they have
8 agreed to put up a new witness, probably should be a
9 nonissue.

10:38AM 10 THE COURT: Okay. Mr. Prabhakar.

11 MR. PRABHAKAR: So, Your Honor, two very quick
12 responses. If the concern is that these two new columns
13 which don't seem to contain any relevant information
14 have been added to the documents and the concern is that
15 that's somehow affecting the expert reports, which we
16 don't understand why they should, one option is that we
17 can produce these documents again without the two
18 columns if that fixes the concern with somehow that we
19 intend to use these two columns to dispute the expert
20 reports. That's one option, if that helps.

21 The second thing -- I think it's totally
22 fine -- I mean, we would have obviously no objection if
23 they wanted to put these documents in front of
24 Mr. Hutchins. I think the only concern is that they're
25 asking for an additional hour. I think depositions in

1 this case, particularly 30(b)(6) depositions, we reached
2 an agreement on what the time limit is, but now we have
3 multiple requests to add additional hours.

4 So, if it's only two columns and if they really
5 just want information about those two columns, if within
6 the time that they already have with the remaining
7 witnesses they want to ask, we have -- obviously
8 we'll -- we'll have the witness prepared to talk about
9 why the two additional columns are there, and it's most
10 likely going to be that some reporting software got
11 updated and they got added.

12 THE COURT: Okay. Thank you.

13 So, Mr. Wood, do you think it would take the
14 estimated hour just to ask Mr. Hutchins about these two
15 columns?

16 MR. WOOD: No, Your Honor. If we're already
17 deposing him on other issues that are related to these
18 spreadsheets, I think we can withdraw our request for
19 additional time if they will agree that we can ask him
20 questions about the spreadsheets.

21 MR. PRABHAKAR: Oh, I would -- they can ask
22 whatever questions they want, Your Honor. These
23 spreadsheets are within the scope. So we would have no
24 objection.

25 THE COURT: Okay. All right. So we'll

1 consider that one resolved and the questions about these
2 two columns will be posed to Mr. Hutchins. Okay.

3 Okay. Dispute number three. It appears that
4 this was resolved in that Extreme was going to respond
5 on March 29th. So, has that been done?

6 MR. WOOD: Your Honor, we never received an
7 update. We never received an update on March 29th to
8 those interrogatories.

9 THE COURT: Okay. So, what's the status,

10:41AM 10 Mr. Prabhakar, and this would be responses to
11 Interrogatory 1 and 5 with responses by March 29th?

12 MR. PRABHAKAR: Your Honor, I'll have to check
13 with my team because my expectation is these should have
14 been done. If they have not been done, we'll produce
15 them in a couple days. I'll be back -- we can certainly
16 have -- if they have not been updated, and I will look
17 into it, but we can have them updated by early next
18 week, Monday or Tuesday, no problem.

19 THE COURT: Okay.

10:42AM 20 MR. PRABHAKAR: But -- I mean, the intent was
21 to update them, but I'll have to look into them as to
22 why they didn't get updated.

23 THE COURT: Okay. So it appears this can be
24 resolved. He'll check the status of it. If they have
25 not been provided, which sounds like you haven't

1 received them, then they will be provided to plaintiff
2 by end of day Tuesday.

3 MR. PRABHAKAR: That's right.

4 THE COURT: Okay. Dispute number four. This
5 also looks -- it appeared that there was just maybe a
6 date needed for the supplementation. What's the status
7 of this? And this is the response to Interrogatory 7, 8
8 and 11.

9 MR. WOOD: So, Your Honor, we did receive a
10 supplement on March 29th to 7, 8 and 11. We do not
11 believe those responses still completely answer the
12 questions, and --

13 THE COURT: Have you had a discussion as to why
14 you do not feel that they are complete with Extreme?

15 MR. WOOD: We have not.

16 THE COURT: Okay.

17 MR. WOOD: So --

18 THE COURT: And what about No. 7?

19 MR. WOOD: Well, that's -- yeah, for 7, 8 and
20 11, I was lumping those altogether.

21 THE COURT: Okay. I just heard 8 and 11 you
22 felt were incomplete responses, but you included No. 7?

23 MR. WOOD: Yes.

24 THE COURT: Okay.

25 MR. WOOD: Parts of 7 are complete and parts

1 are not. So, I think that, you know, they have said
2 they will supplement and, I believe, provide complete
3 answers. So if we could just -- I think we just need to
4 have a schedule in order to do that, and we'll be glad
5 to meet and confer with them on that.

6 THE COURT: Okay. I've asked you to try to
7 meet and confer after the hearing --

8 MR. WOOD: Yes.

9 THE COURT: -- on another issue. Will your
10 schedules permit for you today to include this as well?

11 MR. WOOD: I can.

12 MR. PRABHAKAR: Of course, Your Honor. I'm
13 happy to hear what Mr. Wood has to say.

14 THE COURT: Okay. It will be hard for me to
15 address it --

16 MR. WOOD: Yes.

17 THE COURT: -- unless you all have had a
18 meeting and address it amongst yourselves first. So --

19 MR. WOOD: Okay.

20 THE COURT: Okay. Try to meet and confer on
21 that today. And I would like to have a status report by
22 next Wednesday on these issues that you will be meeting
23 on.

24 MR. WOOD: Okay.

25 THE COURT: And make it a joint report, please.

1 MR. WOOD: Okay.

2 THE COURT: All right. So, let's see, those
3 are the four discovery disputes I had for plaintiff. So
4 now we can move to Extreme's.

5 The first dispute is plaintiffs' response to
6 RFP No. 30, and this is dealing with the different
7 version labels. I guess I want to better understand why
8 Extreme needs these.

9 MR. PRABHAKAR: Sure, Your Honor.

10:46AM 10 Your Honor, this case is all about source code
11 on each side. We've produced source code; they have
12 produced source code. This is a fairly narrow request.
13 But to set the table, let me quickly walk through what
14 do we mean by versions that we're requesting and what we
15 have and what we don't have.

16 So, this is a page from the Plaintiffs' Amended
17 Complaint, and these are their copyright registrations
18 (indicating). Each registration corresponds to specific
19 versions of source code. So, there is Version 15, 15.2,
10:46AM 20 3, 4, so on and so forth. So, these are the versions
21 that are explicitly in the case.

22 Now, there is law on the copyright side that
23 says when you're registering versions, in certain
24 circumstances, if the code is published, you need to
25 provide the delta or the published version, and which is

1 what puts versions that came before 15 at issue.

2 So, the request for versions is basically, we
3 have their source code. We have source code, some of
4 which was shipped to Extreme, but we don't know and
5 there is no representation that source code corresponds
6 to specific copyright registrations because the code has
7 been updated and issues may have been fixed.

8 So there is no -- as of -- the format in which
9 the code has been produced to us on the source code
10 computer, there is no correspondence between what has
11 been produced and these specific versions. So our
12 request to plaintiffs was that please produce these
13 versions and the previous version and we'll be done with
14 this.

15 Plaintiffs' response was twofold; that they
16 provided several versions of code produced to Extreme.
17 I just explained that's not the versions that correspond
18 to the registrations. Because the scope of the
19 registrations has to be clear, we need source code
20 corresponding to each one of these versions.

21 Now, plaintiffs' response is that they have
22 produced their entire repository, and that is correct,
23 but a repository is a meld of versions produced since
24 1994. So, just by the registrations, we're at Version
25 17, and I think 17 was registered in 2011. We are 13

1 years or so later. So there might be additional
2 versions that might have been added to the code.

3 So, the bottom line is: There are lot of
4 versions in that repository. And we are not the
5 custodians of that code, so we don't know how plaintiffs
6 versioned them, how to extract them, particularly the
7 versions that are associated with the copyright
8 registrations.

9 So we've just requested plaintiffs to just
10 produce -- they already have the repository. They just
11 have to run a command or a few commands, extract these
12 versions that correspond to these versions.

13 And for the other versions, we had asked
14 plaintiffs, like, look, we don't know how you version
15 your software. Everybody does it differently. Extreme
16 has three different softwares at issue in this case.
17 Each one of them within the company's versioned
18 differently.

19 And to set the context for why we can't do it
20 ourselves is: I'm going to show you questions that were
21 asked of Extreme's witness related to the repository.
22 So, this is -- this is an issue that plaintiffs are
23 familiar with. So they asked our witness that instead
24 of extracting 800 different versions, could you not have
25 just produced the different repositories and have SNMP

1 extract the code and that would have accomplished the
2 same thing.

3 And this is not attorney argument, Your Honor,
4 this is a technical witness answering this question.
5 Assuming SNMP Research knew how to access the correct
6 tag of the repository, they could have done it. And the
7 only way SNMP Research would know a correct tag that
8 Extreme uses is if Extreme tells them what the tag is.

9 So, this was basically our request. We thought
10 it was a fairly straightforward, noncontroversial
11 request. So -- but the plaintiffs are standing on the
12 fact that they have produced the repository and they
13 need to do no more.

14 There was a concern that we didn't make an
15 explicit discovery request for these documents. Your
16 Honor, I mean, this is just document production that's,
17 like, easily resolved between the parties rather than
18 making a request and then framing it in more legal
19 terms. But to resolve that, we even served that
20 request. The time for responding to that request has
21 passed. We still don't have a document that lists out
22 all the tags in the repository that we could use to get
23 access to these versions.

24 So, to frame my request for the Court, we ask
25 that plaintiffs be ordered to produce from their

1 repository, or whatever other source that they have,
2 source code corresponding to the versions associated
3 with each copyright registration. And if it's too
4 burdensome for them to extract the other versions in the
5 repository, just provide us with a document or documents
6 that -- excuse me -- identify all the tags, all the
7 versions associated with the code in the repository, and
8 we'll work with our expert to get that information
9 extracted in a reliable fashion.

10:52AM 10 So, it's -- that's the scope of Extreme's
11 request, Your Honor.

12 THE COURT: Okay. Thank you.

13 Mr. Wood, what's your response as to how to get
14 this information that correlates to the versions?

15 MR. WOOD: So, first, Your Honor, I think we've
16 skipped a step. If you look at RFP 30, which we
17 responded to long ago, it says, "To the extent not
18 already provided, all source code that you contend is
19 covered by the copyright registrations listed in Table 1
20 of the Amended Complaint."

21 For the Table 1 of the Amended Complaint, we
22 have provided the -- all of that source code.

23 THE COURT: And that's what's being referred to
24 as the repository?

25 MR. WOOD: No, Your Honor.

1 THE COURT: Okay. So, clarify that then.

2 MR. WOOD: So, we -- so, that's -- so, the
3 repository, as Mr. Prabhakar said, is all of the source
4 code. It goes back to '94. So it will be lots of
5 versions of the code. And -- but then you -- if you
6 look at that chart, one of them may be 15, Version 15.2
7 of the software that was registered.

8 Well, SNMP Research provided that version that
9 was extracted from the repository to Extreme and did
10 that for every single one of the versions. We also
11 provided a lot of other versions that happened
12 in-between. So you may have Version 15.2, and then
13 there may be three changes, you know, 15.2.1, and then
14 there may be 15.2.2.

15 So there is a lot of little versions that
16 happened between the big versions, and -- but we
17 put -- this RFP asked for the source code that is
18 covered by the copyright registration. That's exactly
19 what we provided. And it's right out of the repository.
20 That's what we gave them.

21 Now, what -- so, if all they're asking for is
22 the source code -- if all they're asking for is a
23 response to this RFP, we've completely done that.

24 What they have said to this is, no, you need to
25 give us every other version there is that's in your

1 repository as well. You need to extract all of them and
2 let us see what every single one is. Like, well, this
3 RFP doesn't ask for that. We've done exactly what
4 you've asked. And we gave you the repositories. If you
5 want to look at some other versions or look at
6 old -- they have everything we have.

7 But we think we've completely responded to this
8 RFP. If they want to ask about other versions or old
9 versions, I think they need to serve another RFP, which
10:55AM 10 they have now done because I think they realized this
11 one doesn't do -- this one doesn't ask for other
12 versions.

13 THE COURT: So what's the status of the
14 response to their new request?

15 MR. WOOD: We have responded -- we have
16 responded to that, and I think we're still in the -- we
17 haven't heard back from them on our response.

18 THE COURT: Okay. So this new request more
19 explicitly addresses what we're talking about today?

10:56AM 20 MR. WOOD: I think it does. Mr. -- I don't
21 want to speak for Mr. -- it's Extreme's request. So, I
22 think that it more explicitly addresses what they're
23 trying to do.

24 To me, they have -- we have responded to this
25 question. They want additional information. Instead of

1 asking for a new request, they tried to fit it under
2 this one.

3 THE COURT: Well, now there is a new request.

4 MR. WOOD: And now there is a new request. So
5 they have finally issued a new request, which we've just
6 responded to recently, and we haven't heard back from
7 them on our response. So, we're still in the 14-day
8 response period.

9 THE COURT: Okay. So, Mr. Prabhakar, is it
10 10:56AM that this issue -- it sounds like it may be moot if you
11 have issued a new request that more explicitly addresses
12 what you just explained to me you're seeking.

13 MR. PRABHAKAR: May I, Your Honor --

14 THE COURT: Oh, yes.

15 MR. PRABHAKAR: -- just briefly explain?

16 THE COURT: And I don't mean to cut you off,
17 Mr. Wood. I'll let you further respond. I want to get
18 this clarified because I don't want to spend a lot of
19 time on this if you're already responding to another
20 10:57AM request that more directly addresses the matter.

21 MR. WOOD: We think we've fully responded to
22 this request as written.

23 THE COURT: Okay.

24 MR. WOOD: We think they have everything they
25 need. I think there is discussions for us to have on do

1 they really need us to extract every single version, as
2 they say. We don't think they do. They have the source
3 code that we've filed with the Copyright Office, which
4 is the basis of our claim.

5 THE COURT: Okay.

6 MR. WOOD: So --

7 MR. PRABHAKAR: So, Your Honor, I'll try to be
8 brief, but I do want to emphasize the fact that this is
9 a dispute about intellectual property. It's a dispute
10 about property rights. And as with any other property
11 rights disputes, whether it's real property,
12 intellectual property, patents, whatever, it is
13 extremely important that the scope of the property right
14 is clear.

15 Now, I don't know what Mr. Wood is referring to
16 that we have produced the registration that we've
17 provided to the Copyright Office because that's only
18 50 pages, and that's certainly not the full extent of
19 their source code.

10:58AM 20 So, I do not see, based on the manifest files
21 and based on what my expert has looked at, the versions
22 corresponding to the registrations in the source code.
23 And I don't think --

24 THE COURT: Well, let me stop you there because
25 you put that chart up, and you said that was the

1 versions that were part of the Complaint. And, so, what
2 I hear Mr. Wood saying, they have provided the source
3 code that corresponds to all of that and that he's
4 reading your request to be beyond that, and that now
5 you've served a new request, that would cover that.

6 So, to the extent there has -- do you agree
7 that they have responded to the initial request and
8 provided the source code for those versions that you
9 showed the Court?

10:58AM 10 MR. PRABHAKAR: No, Your Honor. We disagree
11 with that representation, and I'll explain why.

12 THE COURT: Okay.

13 MR. PRABHAKAR: So -- and it gets into a little
14 bit of the weeds of copyright law because the request is
15 all source code that you contend is covered by copyright
16 registrations.

17 Now, they started registering Version 15. Now,
18 if they represent -- and if plaintiffs represent --

19 THE COURT: Let me stop you right there. So,
20 just to make sure I stay on the same page, it says
21 "covered by copyright registrations listed in Table 1."

22 MR. PRABHAKAR: Yes, Your Honor. And Table 1
23 was the one that I just showed you.

24 THE COURT: Yes.

25 MR. PRABHAKAR: So -- but the question is

1 source code covered by those registrations.

2 Now, I showed you Version 15. So, if we just
3 go by -- in tiers, there are 14 versions that preceded.
4 Plaintiffs have not taken the position that the first 14
5 versions are not covered by the registration. So,
6 arguably, they should produce Version 1 through 14
7 because their contention is that all prior versions are
8 also covered by the registration.

9 THE COURT: Okay. But does -- that gets to
11:00AM 10 this new request. Does that new request
11 cover -- because that's what I'm hearing Mr. Wood
12 explain.

13 MR. PRABHAKAR: Yes. And, Your Honor, because
14 this issue is so central to the case, we issued the new
15 request so that plaintiffs do not have an argument that
16 we didn't understand the scope of this request.

17 Our belief is that the request for prior
18 versions is covered by 30. But to leave no doubt, we
19 served the new request.

11:00AM 20 And I will assure Your Honor that what I said
21 just moments ago for at least the versions that are not
22 explicitly mentioned in Table 1, Extreme is willing to
23 compromise and reduce the burden if they would just give
24 us a document with the version tags, and which is what
25 months ago, I had asked Mr. Wood in a meet and confer,

1 that why don't you just give us the tags and we'll have
2 our expert figure out how to get it out.

3 So, I'm not even asking them anymore to extract
4 all the versions for us. Just give us the information
5 so that to the extent the versions are in the
6 repository, we can extract them ourselves.

7 THE COURT: But he said that they have
8 responded and they're within the time period for you to
9 get back with him. Is it sufficient what they're
11:01AM 10 producing now?

11 MR. PRABHAKAR: Well, they haven't produced
12 anything, Your Honor, documents-wise. What Mr. Wood is
13 saying that he has responded is that he has responded to
14 the RFPs in the sense that he's served a written
15 response to this stuff. There is not a single document
16 that had been produced the day the response came in.

17 THE COURT: Okay.

18 MR. PRABHAKAR: We have -- and, by the way, to
19 the point that, you know, we haven't raised an issue, we
11:01AM 20 actually sent an e-mail last week asking for a meet and
21 confer on their -- all their responses, not just the
22 ones related to the versions issue, and we have not
23 heard back yet on that specific request, and I think the
24 seven-day period under Your Honor's new order runs out
25 on this Friday.

1 So -- but I'm trying to simplify the issue
2 that, for us, we need explicit versions extracted for
3 the versions that are listed in Table 1. For everything
4 else, we are fine with them just producing a document
5 which identifies all the versions and we will figure out
6 what do we need out of those and how to extract them
7 because our expert reports under the current deadline
8 are due in a couple of weeks, April 30th.

9 We -- even if we engage in the meet and confer
11:02AM 10 process, Your Honor, that clock for us is ticking, and
11 that's why we had raised this issue long ago. But at
12 least we need the specific versions for code that's in
13 the versions identified in Table 1.

14 THE COURT: Okay. So, Mr. Wood, can you
15 respond to his position?

16 MR. WOOD: Yes. What I heard him say is, we
17 need the specific code for those versions identified in
18 Table 1, and that's exactly what we gave them. What
19 they're asking for is additional versions.

11:03AM 20 THE COURT: Yeah, the ones leading up to those,
21 the --

22 MR. WOOD: Yeah.

23 THE COURT: -- prior versions is what he said.

24 MR. WOOD: And maybe all the ones in-between.
25 And they have some of those. We gave them everything

1 that was shipped to Extreme.

2 I think we're -- what we're -- we're having a
3 debate over an RFP that's not even before you is our
4 view. He's -- they're trying to argue the new RFP that
5 they wanted. We're trying to somehow shoehorn that new
6 RFP into this one.

7 THE COURT: Well, he's -- I understand that
8 it's saying that it's included within this. But now
9 he's issued the new one to sort of clarify things. So,
11:04AM 10 I'm wondering -- I mean, can you all discuss this and
11 resolve it?

12 MR. WOOD: So let me --

13 THE COURT: I had misunderstood and thought you
14 had responded with documents, and that doesn't seem to
15 be the case.

16 MR. WOOD: No.

17 THE COURT: So, is --

18 MR. WOOD: I think the way they have asked, the
19 RFP is still overly burdensome because they want every
11:04AM 20 single version. We don't see why that's --

21 THE COURT: Well, he said he was -- he was
22 willing to narrow it.

23 MR. WOOD: We haven't had that discussion. And
24 to his point, we actually had a meet and confer
25 yesterday with Extreme's counsel. We offered to go

1 through these RFPs. They did not want to do that.

2 So they have sent us an e-mail. We have
3 responded. On the meet and confer yesterday, we offered
4 to go through these RFPs and Extreme counsel didn't want
5 to do that. So I just want to correct the statement
6 that we haven't responded or haven't been willing to
7 engage because we are. That's on the new ones.

8 But that -- so, the issue of what's actually
9 registered, what's registered is a particular source
11:05AM 10 code file, lots of files. And if there is a copy of
11 that file in an old version or a new version, that
12 should also be registered as well.

13 Extreme has taken the position in this
14 litigation early on that -- so, for example, we
15 registered Version -- all the source code that was in
16 Version 16.2, and what we shipped to Extreme, I think,
17 was 16.4 or 6. So some version in-between. And they
18 said, well, since you didn't register that version, then
19 you can't pursue your copyright claim. We said, no,
11:05AM 20 it's the code. It's not the label. It's the code that
21 we registered, and the code in that one is almost
22 exactly the same as 16.2, and what wasn't registered
23 there was registered in the next one, so you don't need
24 all of that.

25 And they're kind of back to the same argument,

1 which is, oh, you didn't -- they're trying to say it's
2 the version that's registered and not the actual source
3 code that's in that version tree.

4 And the way copyright law works is, I mean, if
5 you register a book, even if there is a new edition of
6 that book, what you registered in the first edition
7 is -- to the extent it's the same in the second edition,
8 it's still registered. You still have a copyright. You
9 don't have to register every single version.

11:06AM 10 So we've given them all of the code that's
11 registered and it's represented in that table. To the
12 extent they're copies, it's also registered. But they
13 don't need all those versions is our position.

14 And that's the discussion we need to have on
15 this new RFP. What do you -- what do you really need?
16 If you want to just look at it to see how it's changed,
17 we can help them do that in the repository. I think
18 they probably already can.

19 I will say the testimony he put up was about
11:07AM 20 Extreme's repository, not about SNMP's repository. So,
21 does that answer that question?

22 THE COURT: Uh-huh. It just sounds like it
23 would be helpful to have the conversation so that
24 they're not spinning wheels if they have some direction
25 on how to work through it to extract maybe what they

1 need.

2 MR. WOOD: Okay. And we'll be glad to have
3 that meet and confer with them to get exactly what they
4 need if this will -- you know, to resolve the new RFP.
5 But we really think we've fully responded to the
6 existing one that's before you.

7 THE COURT: Okay.

8 MR. WOOD: Thank you.

9 MR. PRABHAKAR: Your Honor, only because this
11:07AM 10 is important for us, I'm going to take a few more
11 minutes of your time.

12 I don't think there is any dispute based on the
13 language of RFP 30 that the source code that plaintiffs
14 contend is covered by these registrations is within the
15 scope of 30. And source code corresponding to these
16 versions in a directory that says Version 15, 15.2 is
17 not present on the source code computer.

18 So, if Mr. Wood's contention is that we've
19 produced the registration that we submitted to the
11:08AM 20 Copyright Office, which it's a little unclear to me,
21 even today, what is he contending is produced on the
22 source code computer. But what our contention is, there
23 are no directories in the repository today corresponding
24 to Version 15, 15.2, 15.3 and every version that's
25 listed out here.

1 And since that's the scope of at least the
2 registration that's at issue, we can have an argument in
3 the expert reports about deltas or these versions,
4 whether they are covered, not covered, all of that. We
5 can have that argument in the expert reports. That's a
6 different fight. But having directories which represent
7 that this is source code for Version 15 that was
8 registered under Registration No. 1-706-718 is not
9 present. If Mr. Wood can tell us right now that if
11:09AM 10 that's on the source code computer, not sitting in some
11 PDF file, I think we don't have to take any more of your
12 time.

13 THE COURT: Okay. Because, Mr. Wood, what I
14 understood you to say is that it's there, but what I'm
15 hearing him say, they can't find -- it's not a direct
16 corresponding file where they can find it.

17 MR. WOOD: Your Honor, it's --

18 THE COURT: So can you help with that?

19 MR. WOOD: Unless it was somehow removed, it's
21 years ago, I actually went to California. I supervised
22 setting them up and getting the source code on there.
23 And this was part of -- these source code trees were
24 part of what we put on there.

25 If somehow they're missing, they can't find

1 them, we've met and conferred on this issue multiple
2 times. This is the first time I've heard they're
3 missing source code for the actual registration trees.

4 I would have been glad -- because I agree, if
5 we didn't produce the source code for the registration
6 trees, that's exactly what's responsive to these RFPs.
7 And we kept saying we did it, and they said, well, we
8 need all the other versions. We said, this doesn't ask
9 for all the other versions, and we don't even -- we
11:10AM 10 think that's burdensome to go get every single version.

11 Anyway, we had that argument over and over and
12 over again. I never heard that they didn't have the
13 source code for the actual registration trees until just
14 now. So, if that's --

15 THE COURT: Well, that sounds like there is
16 something amiss. You said you provided it. They're
17 representing that they can't find how it -- in a
18 directory or anything to correlate to those listed. So
19 it sounds like --

11:11AM 20 MR. WOOD: So we can work that out.

21 THE COURT: -- the parties need to get together
22 and discuss this and figure out what the issue is.

23 MR. WOOD: So if that's the only issue now in
24 RFP 30, we can work that out. Either we'll point it to
25 them, if it somehow got deleted in the last two years,

1 we'll put it back on there, but --

2 THE COURT: And then have the discussions on
3 the outstanding request as well since it seems to go
4 beyond just the ones listed in the Complaint to see if
5 you can resolve that as well.

6 MR. WOOD: Yes.

7 THE COURT: Okay.

8 MR. LEE: Judge, just -- if I may, just from a
9 timing standpoint, we're running out of time to get this
11:11AM 10 done. I mean, we're happy to meet and confer. We will
11 meet and confer. But, like, I --

12 THE COURT: You have to on this issue. There
13 is nothing I can do until we know what the problem is.

14 MR. LEE: Well, we've got to find a way to
15 fast-track this and then have a backstop to it because
16 we've got our expert reports due.

17 THE COURT: Uh-huh. I want a status report by
18 next Wednesday on this. So, you all have to work in
19 your meet and confer between now and give yourselves
11:12AM 20 time to do that joint report due Wednesday.

21 MR. PRABHAKAR: Okay.

22 THE COURT: All right. The second dispute is
23 responses to 90, 128 and 129. I've reviewed the
24 position statements. Is the issue just the
25 identification of the custodians?

1 MR. PRABHAKAR: Yes, Your Honor, that's about
2 it.

3 THE COURT: Can this not be easily resolved,
4 Mr. Wood?

5 MR. WOOD: Are you saying that the only issue
6 is the --

7 THE COURT: To identify the custodians.

8 MR. WOOD: Yes, that's -- we don't have
9 any -- we don't have any problem doing that. We've
11:13AM 10 actually -- we made a proposal to them on what we would
11 run, which was actually across all the custodians that
12 we have for e-mails. So there is no -- it's all the
13 e-mails we've collected for all the SNMP Research
14 employees and agreed to some of the searches and thought
15 some were overly burdensome.

16 We've made that proposal on March 31st. We
17 have not heard back from them. We have run the searches
18 that we thought were reasonable. We have already
19 produced the documents. And, so --

11:13AM 20 THE COURT: So, with the documents,
21 Mr. Prabhakar, do you -- truly, do you just need the
22 identification of the custodians now?

23 MR. PRABHAKAR: I think so, Your Honor, because
24 the documents have just been produced late on April 9th,
25 and I was on a plane all day yesterday, so I haven't put

1 my eyes on them.

2 I think we're fine with the search terms they
3 ran. We're not -- we understand the ones that they're
4 claiming are overly burdensome. Some of them relate to
5 the Brocade products where we don't have this -- the
6 same relevance as we have for the Extreme products. So
7 it's really just about identification of the custodian
8 and that's about it.

9 THE COURT: Any problem doing that before next
11:14AM 10 Wednesday?

11 MR. WOOD: No, Your Honor.

12 THE COURT: All right. Dispute number three.
13 This is plaintiffs' responses to RFPs 29 and 152, and
14 this is dealing with the marketing materials.

15 MR. PRABHAKAR: So, Your Honor, we've discussed
16 this with plaintiffs multiple times, and I think I
17 understand what they have responded in their position
18 statement. I just am having difficulty reconciling
19 that, their statement that they don't have marketing
11:15AM 20 personnel, they don't produce advertising or marketing
21 collateral other than the website.

22 So if I understand plaintiffs' statement, all
23 of their marketing and advertising is done by their
24 website, and somehow that is not borne out by some of
25 the documents that have been produced in this case.

1 And --

2 THE COURT: Can you point to those?

3 MR. PRABHAKAR: Yes, Your Honor. I was just
4 getting there next.

5 THE COURT: Okay.

6 MR. PRABHAKAR: So, this is one of the
7 documents that's been produced in this case
8 (indicating). It very clearly says "Marketing Plan."
9 And I have not seen a marketing plan, at least for the
10 specific product that's at issue here.

11 But even then, in this marketing plan, there
12 are express references to other marketing collateral
13 which I have also not found. It says very clearly that
14 there is updating sales and marketing materials. It's
15 not saying the website. It talks about a mailer to
16 customers and talks about marcom material. It talks
17 about trade shows, all of which relate to marketing and
18 advertisements.

19 I will show you another document that
11:16AM 20 plaintiffs have produced in this case which expressly
21 refers to work that they were doing for advertisements
22 (indicating). And this is Mr. Butterworth submitting a
23 report internally which refers to ad work to bring ideas
24 together. It talks about Wind Forum 2001, which appears
25 to be a trade show. Talks about -- you know, references

1 companies that does marketing, talks about contracts for
2 ads.

3 Here is another report from Mr. Butterworth
4 (indicating). It talks about press work. We've asked
5 for press releases. Talks about a press list.

6 So, I'm not sure what to make of plaintiffs'
7 assertion that the sole source of marketing and
8 advertising is the website. And given that they have
9 marketing plans -- and there is just -- more than one.

11:17AM 10 Here is another one for marketing (indicating). And at
11 the bottom of this, it again talks about preparing for
12 marcom materials, which I understand may be marketing
13 communications material in February 2002 in preparation
14 for a 2002 trade show.

15 So, there is a little bit of disconnect. And
16 certainly this statement in plaintiffs' response is
17 inaccurate in the sense that they're saying that all of
18 our marketing and advertising is done via the website
19 because we're seeing some of these e-mails and documents
11:18AM 20 that actually refer to marketing materials,
21 advertisements.

22 It actually even references specific personnel
23 who are doing marketing and advertising. I didn't put
24 up all the documents because I don't want to take up the
25 Court's time unless I have to, but that representation

1 in their response doesn't seem accurate and certainly
2 all of that material is missing from their production.

3 THE COURT: Thank you.

4 Mr. Wood, how do you reconcile this?

5 MR. WOOD: So, Your Honor, those documents went
6 by pretty quick, but I think --

7 THE COURT: Some of them were dated back in
8 2001. So, I have a question: Is marketing just by
9 website as of a certain date?

11:19AM 10 MR. WOOD: My understanding -- obviously
11 Dr. Case knows this better than I do because I wasn't
12 involved back then. But as of 9/11, SNMP Research
13 stopped going to trade shows, and I think these were
14 referencing trade shows and other things. We did
15 produce --

16 THE COURT: Do you have any of that old trade
17 show material?

18 MR. WOOD: There is a -- they have a directory
19 that had product documents, like design documents. I
11:19AM 20 think that's probably where these came from. We
21 produced everything in that directory. And we've also
22 produced the website. And then I have talked to my
23 client, are there any other advertisements; is there
24 anything else? We just don't do that.

25 THE COURT: Do you have marketing personnel?

1 MR. WOOD: No.

2 THE COURT: Ever?

3 MR. WOOD: Maybe to the extent -- I think
4 Mr. Butterworth was a salesperson back then, but he may
5 have done -- maybe he did some marketing. But I know
6 since I've been involved with SNMP Research, which is
7 2009, there have been no marketing personnel.

8 So maybe there are some old documents. I also
9 find it interesting that we've met and conferred on this
11:20AM 10 issue, I think, twice, and Mr. Prabhakar didn't share
11 any of that information with us in the meet and confer.
12 He waited until he got in front of you; whereas, we
13 would have -- could have gone back and looked for
14 something in 2001. I'm not sure exactly how that's
15 exactly relevant, but -- given some guidance; otherwise,
16 we're just looking across hundreds of thousands of
17 documents, and since they don't have marketing
18 personnel, I don't know of advertisements that they do.
19 They're not advertising in magazines. They're not going
11:21AM 20 to trade shows.

21 THE COURT: What do your salespeople do in
22 trying to bring on new prospective customers? I mean,
23 how do they communicate with them?

24 MR. WOOD: They are mostly -- it's almost all
25 inbound as opposed to outbound. In other words, people

1 are just calling that they need -- there is so many
2 customers and then they need a new product or they need
3 something else. And --

4 THE COURT: Do they then send an e-mail
5 communication in response to receiving a phone call; is
6 that what you're saying?

7 MR. WOOD: So, someone -- it's usually an
8 existing customer, or someone has heard about us and do
9 research because they have been around so long in the
11:21AM 10 industry and that customer will contact SNMP Research.
11 We're not -- I'm not aware of outbound marketing
12 solicitations.

13 THE COURT: It would just be in response to a
14 call.

15 MR. WOOD: Right.

16 THE COURT: Okay.

17 MR. WOOD: So, my comment to Mr. -- in the meet
18 and confer was, I can't guarantee you over the course of
19 25 years there hasn't been a solicitation to a customer,
11:22AM 20 but I don't know how to ferret that out from all these
21 communications to all these different customers.

22 But I know there is no marketing person, you
23 know, that's actively doing that and sending these out,
24 which is what you would normally do is go look. You
25 know, okay, let's see the e-mails they sent because

1 that's what they're doing, once a quarter they're
2 sending out a newsletter, or something like that.

3 So, I mean, we can go back and look, you know,
4 in the 2001 time frame and see if we can find some of
5 those other documents. Like I said, we did produce --
6 I'd like to see these particular ones. Hopefully they
7 will share them with us so we can see exactly where they
8 came from. I suspect they came from this product
9 materials directory that -- and we produced everything
11:23AM 10 in there.

11 THE COURT: Okay.

12 MR. WOOD: And most of it was design -- like,
13 okay, we're coming out with a new release, here is
14 our -- what we're going to do with it kind of thing.

15 THE COURT: Okay.

16 MR. WOOD: So --

17 THE COURT: Mr. Prabhakar, can you tell me if
18 that information did come from the product materials
19 directory that they produced?

11:23AM 20 MR. PRABHAKAR: I have no means of knowing that
21 information, Your Honor.

22 THE COURT: Okay.

23 MR. PRABHAKAR: I mean, I just get them in a
24 production format.

25 THE COURT: Well, it sounds like it would be

1 most efficient for you to sit down and show those
2 examples to Mr. Wood and let them --

3 MR. PRABHAKAR: Right.

4 THE COURT: -- see what they have. He says
5 they don't do trade shows since 9/11, and now he's
6 explained, like, what their salespeople do in response
7 to an inquiry. So it sounds like a more thorough
8 discussion about the marketing and sales would be
9 helpful. And then you have the specific -- and you said
10 you had more examples. I know you just gave a sample.

11 MR. PRABHAKAR: I can show you one more just to
12 address this concern that how do we look for
13 solicitation e-mails and all.

14 This is another example of a daily report from
15 2006, actually (indicating). Again, I -- I do not want
16 to offend anybody by doubting the representation that
17 they don't do trade shows. But at least this daily
18 report has a column that says Trade Shows and Marketing
19 or Website as recent as 2006. And the reports that we
20 just saw about trade shows actually postdated 9/11. But
21 I don't want to offend anybody by saying that I don't
22 believe you.

23 THE COURT: Well, it may be that he -- with
24 this information, he can ask more tailored questions --

25 MR. PRABHAKAR: Yes.

1 THE COURT: -- to get the information.

2 MR. PRABHAKAR: Right. But there does seem to
3 be a specific mechanism by which customers reach out to
4 them and then they respond. There is, like, web
5 queries, info prospects.

6 As Your Honor knows, sometimes companies have a
7 website through which you can send in a query which
8 triggers the marketing people to respond. So, clearly
9 there is a directed way. I'm sure there is an e-mail
10 address to which those queries go.

11 THE COURT: Okay.

12 MR. PRABHAKAR: And that's what we've been
13 asking for. And I didn't mean to say that we didn't
14 share this information because, you know, that's kind of
15 in opposite order. We met and conferred, raised the
16 issue with the Court, and then in response, Mr. Wood
17 said certain things; we don't do marketing; we don't
18 have marketing personnel. In a small company, sales and
19 marketing are often melded. You don't want to have too
20 many silos. But, really, it's not the label of the
21 personnel that's important, it's the function.

22 THE COURT: Uh-huh.

23 MR. PRABHAKAR: And I think to the extent
24 solicitation e-mails are a problem to search, I think
25 this document offers -- I mean -- and I don't know why

1 we would have to identify that because SNMP knows best
2 about how they get contacted.

3 And all of this information is relevant for
4 damages, including the 2001 time frame, because that's
5 how we understand what the value of the business was in
6 2001. It's relevant throughout because how extensively
7 plaintiffs reach out or contact prospective customers is
8 also relevant to the publication of their copyrighted
9 material because there is case law that says that if
11:26AM 10 you're soliciting business extensively for your
11 software, that can constitute publication of that
12 software, which is why -- another additional reason
13 besides damages why this information is relevant, Your
14 Honor.

15 THE COURT: Okay. All right.

16 Mr. Wood.

17 MR. WOOD: Just one other thing. Dr. Case
18 corrected me. He said they were at a trade show during
19 9/11 -- probably Interop in Atlanta -- and they already
11:26AM 20 had some booked for the next year. So they did attend
21 some trade shows in --

22 THE COURT: That extended beyond.

23 MR. WOOD: Yeah, they did attend some trade
24 shows the next year. Maybe there was a small one. I
25 think that -- anyway, we'll be glad to talk to them and

1 look at this information.

2 THE COURT: The reference, I believe, was to
3 2006, and it had trade show or website on there. So --

4 MR. WOOD: Yeah, which -- and if, you know,
5 this -- I hadn't looked at that document until he just
6 showed it. But it looks like -- that looks like a
7 template. So -- and I know that SNMP Research personnel
8 have daily reports that they file, and I think that's
9 what that was, and that was a template, are you doing
11:27AM 10 anything in this area. So, I didn't see anything
11 underneath it. It says that just because it had the
12 word "trade show."

13 THE COURT: Well, it sounds like you all need
14 to discuss this further as well, so add this to your
15 list for the report next Wednesday.

16 All right. Dispute number four. This
17 addresses plaintiffs' responses to Interrogatories No. 6
18 and 7, and there is an issue whether this one was
19 timely.

11:28AM 20 So, Mr. Prabhakar, I'd like for you to address
21 that when you're stating your position on it, too.

22 MR. PRABHAKAR: Sure, Your Honor. So, in terms
23 of timeliness, I can represent to you, Your Honor, we've
24 actually sent out letters to plaintiffs about their responses
25 way back in August of last year. None of

1 these requests that we're discussing here today are of
2 recent vintage. We've been trying to get these
3 materials since last fall, and plaintiffs have
4 represented before that that their document production
5 and discovery is substantially complete.

6 But these requests have been served in 2023.
7 And these are deficiencies that we have informed them
8 about during meet and confers over the years. We had a
9 specific meet and confer, and there is so much material
11:29AM 10 to discuss, Your Honor, there are so many discovery
11 issues that we're chasing right now that in an hour-long
12 meet and confer, certain things get discussed in detail,
13 certain things get discussed superficially, and I
14 believe this is one of those that got discussed
15 superficially.

16 But the deficiencies are -- at least to us,
17 seem apparent on the face, and we identified some of
18 them. But, like, plaintiffs' response talked about Rog
19 7 but didn't particularly talk about Rog 6.

11:29AM 20 So, here is a statement in their response to
21 Rog 6 about facts related to the license. And keep in
22 mind that our request calls for all facts related to
23 their contention that Extreme has breached a license.
24 So it's in some sense asking for everything that the
25 plaintiffs are going to rely on in this case.

1 And I'm showing you a later response
2 (indicating). This is not even the response that we had
3 when the issue was raised because Your Honor had ordered
4 plaintiffs to supplement removing the subpart objections
5 and this is post that.

6 There is an assertion about licensee's network
7 switch project. I don't see any citation. Where is
8 this statement coming from? What's the document that
9 they rely on?

11:30AM 10 This response repeatedly talks about multiple
11 products. You'll see this repeated in this response
12 several times that Extreme copied their software in
13 multiple classes of products totaling scores of
14 products.

15 They talk about it on the next page. This
16 response basically says the same thing over and over
17 again without actually giving us the answer that we
18 want.

19 If there are scores of products, I don't see an
11:31AM 20 identification in this response. They talk about an
21 authorized combination of target processing, operating
22 systems that were authorized under the license, and
23 their contention is that there are certain products that
24 don't fall under that classification. I don't see an
25 identification of those products.

1 And I have looked in the discovery that we have
2 produced, and I'm pretty certain that they have all the
3 information to respond to this interrogatory based on
4 our document production. I don't see that.

5 There was an assertion in their response that
6 we failed to maintain their copyright notice in the
7 software, and their response, to date, served in
8 March 2024, is that Extreme has not produced source code
9 and install images.

11:32AM 10 I was here in front of you, Your Honor, in
11 November, and I told you that the install images have
12 been produced. I don't think we've heard before today
13 that somehow the source code production is deficient.
14 And yet as of March 2024, this is how plaintiffs'
15 response reads on Rog 6.

16 And I can move on to Rog 7 if Your Honor wants.

17 THE COURT: Yes, please.

18 MR. PRABHAKAR: I think Rog 7, particularly as
19 it relates to Enterasys, we just don't have any facts
11:32AM 20 related to either Enterasys' copyright
21 infringement/breach of contract.

22 Your Honor may remember last time there was a
23 discussion about Extreme's e-mail, which we presented
24 that certain products are under the Enterasys license
25 which Extreme said was a mistake. We presented to you,

1 Your Honor, that we're not going to rely on the
2 Enterasys license form the EXOS products, and yet there
3 is nothing in the rog response other than that e-mail,
4 which now Extreme has responded to on the record, that
5 the earlier e-mail was sent by mistake. We're not
6 relying on that. We need to get updated contentions as
7 it relates to the Enterasys products.

8 If we committed fraud related to the Enterasys
9 products, we're entitled to know. If we breached the
11:33AM 10 contract, we're entitled to know. If there is copyright
11 infringement by Enterasys, we're entitled to know. But
12 we don't have those facts.

13 And their response still is that we haven't
14 completed the production of the full scope of
15 information and I don't know what information is lacking
16 to respond to this interrogatory. And if there is
17 information that's missing, when was that dispute
18 brought in front of the Court? And if it wasn't brought
19 in front of the Court, then, really, is something
11:34AM 20 missing, or this response needs to be updated because
21 we're less than a week away from taking a couple of
22 depositions and I just don't have basic facts to ask the
23 witness, why do you contend this line of product
24 breached the license or did something.

25 And these are interrogatories, Your Honor, that

1 have been outstanding since last year. I think they
2 were -- if I remember correctly, they were served in
3 March of 2023. We're now a year after and we're still
4 chasing deficiencies.

5 THE COURT: Thank you.

6 Mr. Wood, I saw some indication in your
7 position statement that you were willing to supplement.
8 So, can you address that?

9 MR. WOOD: Yes, Your Honor. We do think a
10 lot -- we never did meet and confer on these, but that's
11 really beside the point because we're going to
12 supplement anyway.

13 So, now that we have finished our expert
14 reports, our initial expert reports last week, those
15 expert reports have a list of products. I think our
16 experts have done work on some of these other items,
17 too. And, so, in -- it's in our interest to put that in
18 these interrogatory responses, so we're going to do so.

19 We didn't -- we actually gave In- -- I think
11:35AM 20 Interrogatory No. 6 was a ten-and-a-half-page response.
21 We gave a pretty fulsome response. But now that we've
22 had the expert reports, we're going to supplement. So I
23 think that it's a nonissue.

24 THE COURT: And it will address the questions
25 of what line of products breached whatever?

1 MR. WOOD: Yes, yes.

2 THE COURT: Okay.

3 MR. WOOD: And that's our -- our experts have
4 identified those products, and, so, we'll put those in
5 the interrogatory answers.

6 The one thing we right now don't intend to
7 respond to because we don't think it's a part of the
8 question is their 7-1, how the reported facts related to
9 fraud relate to the legal elements of fraud. We don't
11:36AM 10 think the interrogatory asked for a legal analysis, it
11 just asked for the facts. And this -- that doesn't seem
12 to be responsive to Interrogatory 7.

13 So that -- the others are just simply facts.
14 Like, what are the products; what's your fact
15 for -- that they removed the copyright notice. And, so,
16 we'll -- you know, things like that.

17 This is, take your facts, which I think we've
18 already given them, and apply them to the legal
19 elements. One, the interrogatory doesn't ask that, and
11:37AM 20 it doesn't necessarily seem like an appropriate use of
21 an interrogatory. So we weren't intending to supplement
22 and satisfy number one, 7-1.

23 THE COURT: Okay. All right. Thank you.

24 Mr. Prabhakar, does that resolve this, given
25 that he said that they will supplement with the

1 information that's been compiled by their expert that
2 would be specific to these questions except for 7-1?

3 MR. PRABHAKAR: I understand their position on
4 7, Your Honor, at least related to the legal elements of
5 fraud. All we ask at this time is a date certain for
6 when the response would be provided.

7 THE COURT: And I was going to ask that. When
8 do you intend to supplement?

9 MR. WOOD: If we could do that in two weeks, if
10 that's sufficient.

11 THE COURT: Can you do it by next Friday?

12 MR. WOOD: Yes.

13 THE COURT: Okay. Next Friday.

14 All right. The next dispute, number five, this
15 addresses plaintiffs' response to RFP No. 7. It looks
16 like plaintiffs are stating that they have produced all
17 of the responsive documents. So, Mr. Prabhakar, can you
18 address your position on that?

19 MR. PRABHAKAR: Yes, Your Honor. And to give
11:38AM 20 the Court some comfort, this is the last one because I
21 think we're done on 10. So we don't have to discuss the
22 next one, at least from our perspective.

23 THE COURT: Okay.

24 MR. PRABHAKAR: So, the plaintiffs produced 11
25 documents which were related to third-party

1 contributors, and they were really just related to two
2 third-party contributors, and we find that a
3 little -- we're not quite sure if that truly is the full
4 extent of third-party contributors for a couple of
5 reasons.

6 So, in their license agreement with Extreme,
7 under Patents, Copyrights and Trademarks, they discuss
8 third-party contributors. Because, as you can
9 understand, Your Honor, for copyright registrations, you
11:39AM 10 can only register or claim registration or claim
11 copyrighted material that you have created, not what
12 third parties have created. That's why the third-party
13 contributors identification for this kind of a case is
14 important.

15 And it says there are programs with notices
16 shown in Attachment B to the license. And it expressly
17 mentions here a MOSY MIB compiler and ISODE package
18 (indicating). I don't know how to exactly pronounce
19 that, but let's just call it ISODE.

11:40AM 20 Attachment B talks not just about ISODE, It
21 talks about a bunch of contributors; the MITRE
22 Corporation, Northrop, NYSER.Net, Marshall T. Rose. We
23 haven't seen any communications or documents related to
24 these.

25 The next page talks about DES. We haven't seen

1 anything about DES. We have seen e-mails, a couple of
2 e-mails, about ISODE data security.

3 ISODE seems to be something that they use as a
4 third-party product or code. It's also on their website
5 in the glossary. It's a little -- we'll try to zoom in
6 so that it's easy on the eyes.

7 Their own website refers to ISODE. I have seen
8 nothing in the production relating to communications
9 with ISODE.

11:40AM 10 And another reason why we are not a hundred
11 percent sure what's going on with identifying
12 third-party communications or documents, Your Honor, is
13 Interrogatory 15 that they just responded to which
14 expressly asks for identification of third-party code
15 and the source of the third-party code, and this is
16 their response (indicating). It refers to the source
17 code repository produced by SNMP Research in this
18 litigation.

19 So there seems to be something going on with
11:41AM 20 respect to their lack of identification of who are the
21 third-party contributors, whether in the form of
22 documents, whether in the form of interrogatories, and
23 that's why we're not sure if the assertion that 11
24 documents relating to third-party contributors when I
25 just showed you at least five or six, ISODE and then the

1 list mentioned below.

2 We looked at one of the expert reports which
3 talks about code that came from Marshall Rose. That's
4 part of their product.

5 So, we're just -- like this reluctance to share
6 information about third-party contributors, which is
7 pretty key to our case, and certainly it matters on the
8 scope of their copyrights. So we're not sure if we are
9 getting the information that we need from them, either
11:42AM 10 by the way of interrogatory responses because you just
11 heard Mr. Wood say that the source code repository is
12 all the code that they have been developing over the
13 last 20, 30 years. And the rog response says, go look
14 in the source code repository, when they should already
15 know this information and how voluminous it is.

16 But this rog response, I won't harp on this
17 because this is probably coming to you in a dispute this
18 week. But there is certainly something missing on third
19 parties. I don't know if -- why the lack of candor in
11:43AM 20 terms of identifying third parties or identifying
21 communications with third parties. But we don't think
22 11 documents relating to two third parties completes the
23 response to our RFP.

24 THE COURT: Okay.

25 MR. WOOD: Your Honor, in response to RFP 7, we

1 searched for any e-mails that are to or from any of
2 these third-party entities. The SNM- --

3 THE COURT: The names that he showed?

4 MR. WOOD: Yes. And I think maybe
5 even -- maybe even more. But, I mean, there is no lack
6 of candor. He has a list of who they are. So it's not
7 like SNMP Research is trying to hide it. They have the
8 source code. They can search for the copyrights from
9 all those entities and see who they are.

11:44AM 10 So we searched for anything having to do with
11 the code and produced those documents. There is
12 just -- we went through thousands of documents. There
13 is hardly anything.

14 When you have open source software, there is no
15 negotiation. So, open source software, they put the
16 software out on the internet and you go get it and you
17 use it. You don't --

18 THE COURT: And all of these were open source?

19 MR. WOOD: I don't know. I'd have to check
11:44AM 20 with my client to be sure. I believe -- I believe
21 that's the case. I'm not sure about the Marshall Rose
22 one. But all the university ones and things like that,
23 they're different tools and pieces of source code that
24 would have been downloaded and used in the product.

25 But you don't -- there is no negotiation

1 process like there is with one of SNMP Research's
2 clients where they contact you, here is the license, you
3 pay us money, we send you an agreement. There is back
4 and forth and there is negotiation. You just -- they
5 have it out there; you go get it and you use it. So,
6 sometimes you have to ask them a question, but that's
7 pretty rare. You usually just use it.

8 So, I mean, there is no --

9 THE COURT: So, you're representing that the
10 search has been done for the communications with all of
11 the listed third-party contributors that he's at least
12 shown the Court today?

13 MR. WOOD: Right. We searched the list. We'll
14 be glad to share exactly what we searched with them. If
15 they think we left someone out, we can search that
16 person. But I wouldn't have expected to find a lot of
17 documents because of just the way open source works.
18 And we didn't. I was actually surprised we found any.
19 But we did -- we did find some. There was some
20 communication sometimes with an author about some
21 things.

22 There is also -- there is one contractor who
23 contributed to the SNMP Research software, and we have
24 produced all of those documents. There is -- there are
25 a lot more communications related to that contractor.

1 But we did produce all of those.

2 THE COURT: Okay. So you produced those, and
3 you can check and confirm whether the ones shown today
4 were all open source or not and you can share with
5 Extreme the search that you performed?

6 MR. WOOD: Yes.

7 THE COURT: Okay.

8 MR. WOOD: Okay.

9 THE COURT: Mr. Prabhakar, it sounds like he's
10 at least explained and responded. And, so, I ask that
11 you have those discussions. Let him share the search
12 with you, with the additional details he'll look into
13 about whether or not they were open source. He says he
14 did with the third-party contractor provide that
15 information. So, if you can make sure you have that.
16 Otherwise, it sounds like it's responded to. But you
17 can put that in your status report that you all have had
18 the discussion and checked all of that so the Court can
19 be assured that that is complete.

11:47AM 20 MR. PRABHAKAR: Yes, Your Honor.

21 THE COURT: Okay. And you said RFP No. 10,
22 which is the sixth discovery dispute, has been resolved?

23 MR. PRABHAKAR: Yeah, we're not asking for
24 anything else.

25 THE COURT: Okay. All right. So that brings

1 us to our last matter, and this is for the deposition,
2 Extreme's Rule 30(b)(6) deposition. And I've looked at
3 Extreme's proposed dates. Did the one deposition occur
4 yesterday that was on the schedule?

5 MR. PRABHAKAR: Yes, Your Honor.

6 THE COURT: Okay. So that's complete. So the
7 next dates we have are Fitzgerald for April the 23rd,
8 and then Hutchins, which we've discussed, the 7th.

9 Mr. Wood, I understand you have been waiting,
10 and your position is you would like it to occur earlier,
11 but the schedule seems appropriate with everything that
12 needs to be done.

13 So is there anything else you wish to add for
14 why it would need to occur any earlier than what's set
15 forth?

16 MR. WOOD: Yes, Your Honor. So, a couple of
17 items on scheduling. So, the deposition did occur
18 yesterday, but on the -- on the 9th, the day before the
19 deposition, so, two days ago, the day before the
11:49AM 20 deposition occurred, we were informed that Mr. Ajmera
21 would not be discussing Topic 25 and --

22 THE COURT: So he was designated for 17 and 25,
23 and the day before you were told it would just be one
24 topic?

25 MR. WOOD: Yes. And part of our problem with

1 this, and we don't know why we didn't find out until the
2 day before when this was, you know, agreed upon much
3 earlier, but also Mr. DeBacker on February 14th, in the
4 December 29th, 2023 status report to the Court was
5 scheduled for Topic 25 on February 14th, and
6 Mr. DeBacker was not prepared during his deposition to
7 discuss Topic 25. And, so, Extreme said, we'll get
8 somebody else to do that.

9 And, so, we've now prepared -- we've had two
11:50AM 10 different people prepared to take a deposition on Topic
11 25, and we either showed up at the deposition and found
12 out he wasn't prepared to talk about it, or the night
13 before when we were already -- the deposition yesterday
14 took place in Boston. So someone had to travel to
15 Boston and we were already there.

16 THE COURT: Can you remind me what Topic 25 is?

17 MR. WOOD: So, this is their steps to collect
18 documents and how their, you know, e-mail systems work.
19 Like, it's all about their documents and how they
20 gathered things and that type of thing.

21 THE COURT: Okay.

22 MR. WOOD: The -- we are also -- so, Topic 25
23 has not been rescheduled, and we really need some sort
24 of mechanism so we don't run into this problem where we
25 just -- we show up and we've prepared and then we've got

1 to prepare again and then we've got to travel again.

2 And, so, we don't know if that's going to be
3 another date. Is that going to be Mr. Fitzgerald? Is
4 it going to be Mr. Hutchins?

5 We also have not scheduled Topic 9. So, there
6 is two parts to Topic 9. One is the questions about
7 their written discovery, and that is -- that's been
8 briefed. That's been fully briefed and is now before
9 Your Honor.

11:51AM 10 The other part of Topic 9, which is related to
11 25, has to do with their collection of documents
12 specifically for discovery. And we haven't -- they have
13 agreed to put someone up for that part of Topic 9.
14 Mr. DeBacker also was supposed to be up for that topic
15 and was not prepared to discuss it. But we have
16 not -- we have not gotten that scheduled either.

17 And, so, I mean, we can wait until the 7th for
18 Mr. Hutchins. We're just -- we're trying to get through
19 these, and we didn't under- -- you know, there was no
11:52AM 20 discussion about why did he need to be a month out; why
21 couldn't we do it earlier?

22 But probably the bigger deal is just
23 getting -- making sure we get through all the -- all the
24 topics. And then when they put up a witness and say
25 they're putting up a witness for a topic that they

1 actually -- actually follow through because we're having
2 to retake these depositions.

3 And part of the motion on Topic 9 is we would
4 like some extra time, if Your Honor sees fit to reopen
5 Topic 9, because we did spend time trying to question
6 the witness on that, and we think we should get a little
7 extra time there. But I think that's probably more
8 appropriately handled in response to that -- to that
9 motion. But it's related to all this -- to all this
11:53AM 10 scheduling. So --

11 THE COURT: All right. Mr. Prabhakar, if you
12 could address Topic 25 and what the plan is for that.

13 MR. PRABHAKAR: Yes, Your Honor. Let me
14 address it in a couple of parts. So, Mr. DeBacker was
15 prepared on Topic 25, and we thought he provided
16 testimony as best he could. The problem with Topic 25,
17 Your Honor, is: It's about efforts to collect documents
18 responsive to discovery requests or to preserve
19 documents related to this litigation.

11:53AM 20 As you can understand, in a case of this size,
21 the bulk of that work is done by the lawyers in
22 communication with the company's personnel, and all of
23 that stuff is privileged. So -- or even if not all of
24 that, at least our communications with them about
25 document collection and information that they provide us

1 is privileged. It's a hard topic in a case of this
2 complexity.

3 Mr. DeBacker was prepared as best he could.

4 Mr. DeBacker was in a peculiar personal situation where
5 he was coming back from his wife's surgery and just
6 didn't have the amount of time that he could fully
7 prepare on 25. And there were certain questions asked
8 during the deposition which suggested that Extreme may
9 have, you know, destroyed documents or done something of
11:54AM 10 that sort, and which is what really got us worried about
11 where plaintiffs are going with 25 because we are a
12 hundred percent sure none of that has happened.

13 So, we -- we recognized the gravity of this
14 topic, and, therefore, we tried to prepare Mr. Ajmera.
15 And, again, this is not -- like, IT is not Mr. Ajmera's
16 forte. We tried to prepare him, and we were not
17 confident that he would be able to provide testimony
18 which would not end up in front of Your Honor that
19 somehow he was unprepared. It's a hard topic.

11:55AM 20 Topic 9 was another reason why we had to pull
21 him back because we were not able to understand how 9 is
22 different from 25. And we recognize that we had not
23 designated him on 9. And we wanted to understand from
24 plaintiffs, how are 9 and 25 different so that next
25 person who is designated can be designated on both and

1 then we can call these topics done.

2 So that's why we had to pull Mr. Ajmera off at
3 the last minute because we did not want to have three
4 tries on the same topic. I understand that it could
5 have been frustrating for plaintiffs. But I think it
6 would have been more frustrating for them had they
7 actually asked the questions, burned the time and then
8 realized he was not prepared. So --

9 THE COURT: So, have you had the discussions on
10 the scope of those topics so that you can find the
11 appropriate person to designate?

12 MR. PRABHAKAR: The interplay between 9 and 25,
13 we sent an e-mail to plaintiffs the day we pulled
14 Mr. Ajmera back on this topic.

15 THE COURT: On the 9th.

16 MR. PRABHAKAR: On 9. Can you explain to us --
17 the way we understand it, 9 and 25 seem to be, you know,
18 the same scope, at least the agreed-upon part of 9,
19 which was not in dispute before Your Honor. And if
11:56AM 20 plaintiffs tell us, okay, they're the same scope,
21 they're good, the next witness we can prepare for it.

22 And it's most likely going to be Mr. Fitzgerald
23 and it's not going to be Mr. Hutchins. But, again, some
24 of this kind of gets resolved as we get into the depo
25 prep mode and see if the witness can gather enough

1 information within the company to be prepared about
2 this.

3 So we expect 9 and 25 to be addressed together,
4 most likely with Mr. Fitzgerald. But, really, the
5 expectation here was that we did not want to put up
6 another witness that plaintiffs then would say was
7 unprepared.

8 And I don't know if, like, the delta is like --
9 it seems like now plaintiffs are over-prepared in terms
11:57AM 10 of having done their work twice. But, really, I
11 think --

12 THE COURT: I think it's more in terms of
13 scheduling.

14 MR. PRABHAKAR: Yes, Your Honor.

15 THE COURT: If there is going to be a person
16 outside of Fitzgerald or Hutchins, where is that going
17 to be worked in?

18 MR. PRABHAKAR: I don't expect this to be a
19 person outside of Mr. Fitzgerald or Mr. Hutchins, Your
11:57AM 20 Honor, because, frankly, this is a topic that it's
21 virtually hard to find any single person in Extreme who
22 actually, as a part of their job, knows everything that
23 was done in the context of discovery. Because there are
24 repositories that engineering knows about, there are
25 repositories that marketing knows about, that finance

1 knows about. There is not a single IT person that knows
2 about all of them. And then there are efforts to
3 collect documents, a large part which tends to be
4 privileged. But we also wanted to be forthcoming in
5 terms of what we did because we didn't want any, you
6 know, blemish on our document collection and production
7 efforts.

8 So, it's a hard topic to prepare a witness on,
9 and -- but we will not push this beyond Mr. Fitzgerald
11:58AM 10 or Mr. Hutchins. And I'm almost more than 50 percent
11 sure it's going to be Mr. Fitzgerald because his
12 function at least sits in the organization at a place
13 where he has insights into multiple teams and he's more
14 likely than not to be able to get this information.

15 So it was done out of an abundance of caution
16 that we didn't want to waste plaintiffs' time again, but
17 not meant to, like, surprise them in any way.

18 THE COURT: Okay. All right. Well, with that,
19 Mr. Wood, it sounds like topics No. 9, the second
11:59AM 20 subpart, and 25 will not -- will likely be
21 Mr. Fitzgerald. So that would fit in to the schedule
22 that's proposed. So the Court's inclined to go with
23 this schedule at this point.

24 MR. WOOD: Okay. Could we update the Court on
25 Extreme's agreement for 9 and 25 with Mr. Fitzgerald and

1 when those dates --

2 THE COURT: Yes. Have you responded to his
3 e-mail of the 9th asking for clarification on 9 and 25?

4 MR. WOOD: I believe we did.

5 MR. PRABHAKAR: I don't see that, Your Honor,
6 but I think if Mr. Wood can represent right now that 9
7 and 25 are coterminous, I think that will just
8 short-circuit us going back and forth on this.

9 MR. WOOD: Yeah, I think we said they overlap,
11:59AM 10 and we were fine to have one witness cover both. It
11 wasn't a problem. So that's what we said on the 9th.

12 THE COURT: Okay. Well, let's just then go
13 with this schedule and with the anticipation that it
14 will be Mr. Fitzgerald on the remaining part of 9 and
15 for 25.

16 Okay. So, that's all I had on the list today.
17 You all have a lot to do. So, is there anything else we
18 need to take up at this time, Mr. Prabhakar?

19 MR. PRABHAKAR: Couple of things, Your Honor.

20 THE COURT: Okay. That's fine.

21 MR. PRABHAKAR: Hopefully it will not take a
22 lot of time.

23 Just based on the meet and confers that we're
24 having and we're supposed to have, we anticipate there
25 might be additional disputes. I think what Your Honor

1 did last time in February with setting this date --

2 THE COURT: Let's be more positive.

3 MR. PRABHAKAR: I wish, Your Honor. But we
4 already have two disputes that are at an impasse.

5 But I think what Your Honor did in February,
6 which was proactively set a date that the parties could
7 then work together, we would appreciate if we could have
8 a tentative date set for the next hearing. And if it
9 turns out that, you know, both parties for a change get
12:00PM 10 along and have everything, we can inform the Court and
11 then we could make it that date. But I thought what we
12 did last time was very, very helpful for both parties,
13 in terms of teeing up the issues before the Court.

14 THE COURT: Mr. Wood.

15 MR. WOOD: So an important issue for us is the
16 reopening of Topic 9 --

17 THE COURT: 9, uh-huh.

18 MR. WOOD: -- which we think Mr. DeBacker
19 certainly was not prepared on the written discovery.
20 And Extreme's arguing the scope didn't cover that. And
21 that's been briefed before you, but our -- what we're
22 trying to do is: We want to question a 30(b)(6) witness
23 on the facts in their interrogatory responses. And, so,
24 right now we're being prohibited from doing that because
25 that's an open issue. And if we go forward with

1 Mr. Fitzgerald, he's covering all the rest of these
2 topics. It -- it's going to be -- it's going to cause
3 us a problem because we'll want to ask him about the
4 facts. They will say that's out of scope because it's a
5 fact in an interrogatory. And then they're going to
6 say, well, but yet it was already covered, which is
7 really their argument, even though he wasn't up for
8 that; he wasn't up for the facts in the interrogatories.

9 So, if we are going to have a hearing and Your
10 Honor thinks a hearing is necessary to resolve the
11 briefing on Topic 9, we would like to do it sooner
12 rather than later so that maybe we could get that
13 resolved before Mr. Fitzgerald's deposition.

14 THE COURT: Okay.

15 MR. PRABHAKAR: Your Honor, I don't want to
16 comment on Topic 9 which has been fully briefed before
17 the Court. I don't want to argue that motion.

18 THE COURT: You said you have another issue,
19 though.

20 MR. PRABHAKAR: Yes, I do. And it's -- as Your
21 Honor probably has figured out, it's my favorite issue,
22 which is the prior litigation materials.

23 THE COURT: Uh-huh.

24 MR. PRABHAKAR: And we are going to meet and
25 confer with plaintiffs. What I'm hoping is for us to

1 get some guidance from the Court so that this is not an
2 open-ended process. These are really critical
3 documents.

4 We have consent from Avaya. I have talked to
5 counsel for Nortel. He is waiting to get the
6 notification for production of the documents. And he
7 has represented to me that once they get the
8 notification, Nortel would promptly respond, noting that
9 they are not going to intervene or prevent the
12:03PM 10 production of these documents. But where we are stuck
11 right now is, they haven't received notice for the
12 production of these documents.

13 The prior litigation materials, even though
14 they seem numerous, right now, we think the scope of our
15 request has collapsed into two unique categories or
16 three unique categories; expert reports, deposition
17 transcripts of plaintiffs' fact witnesses, and
18 deposition transcripts of the expert reports that are
19 requested. So we could actually put the deposition
12:04PM 20 transcripts for experts in the same bucket as expert
21 materials. And then the third material is sealed court
22 filings.

23 Based on the lists --

24 THE COURT: I'm sorry; what was the last one?

25 MR. PRABHAKAR: Oh, sealed court filings, Your

1 Honor.

2 THE COURT: Okay.

3 MR. PRABHAKAR: So, the problem right now is
4 information asymmetry, both for the Court and for us,
5 because Your Honor ordered plaintiffs to produce the
6 list, which, I think, would have been a really helpful
7 exercise in getting this to resolution. But we sent the
8 list to the Court. I'm happy to put it up again. But
9 the list just does not have the information,
12:04PM 10 substantively, at least, on the Avaya side to help us
11 make a decision on what is not relevant.

12 So, what we are hoping, Your Honor, and this is
13 just a proposal to see if we can get this issue
14 resolved, is that based on the lists that the Court
15 ordered plaintiffs to produce and then we identified
16 what was wrong with those lists and plaintiffs had a
17 second chance to supplement those lists. So I think
18 that the universe of lists should be considered done.
19 And now we have identified materials to the plaintiffs
12:05PM 20 based on the contents of these lists that we think are
21 relevant to this case and are important for us to have.

22 In the meet and confer process, Your Honor,
23 what we would like is that plaintiffs now tell us which
24 expert reports or which of their fact witness
25 transcripts are irrelevant. Once we have that

1 information, we may agree with part of that, we may
2 disagree with part of that, and we will provide them our
3 reasons. And then whatever is in dispute either the
4 Court hears why plaintiffs think it's irrelevant, why we
5 think it is relevant.

6 But then once that process is done, hopefully
7 we come up with a list that both sides agree that, okay,
8 we'll drop these expert reports; they seem totally
9 unimportant, you know, irrelevant. But at least we have
12:06PM 10 a firm date when the Court can weigh in on specific
11 documents or specific expert reports or transcripts and
12 not have us meet and confer document by document
13 because, really, it's the expert reports. If the expert
14 report is relevant, all the associated exhibits are
15 relevant and the expert's transcripts are relevant. If
16 the expert report is irrelevant, it's not like we're
17 going to ask, this exhibit seems interesting, let's have
18 that.

19 So, we're just hoping to put together an order
12:07PM 20 process so that plaintiffs don't think we're wasting
21 their time meeting and conferring. We don't feel that
22 plaintiffs are trying to run out the clock on giving
23 notice, and we can just, like, litigate this case fairly
24 and without us -- you know, the parties getting into
25 each other's motives and just focusing on the substance.

1 So, that's my request, Your Honor. But if the
2 Court has any other directions, I'm happy to take that
3 as well. But that's what I thought would be a fair way
4 to get this issue resolved and off your plate,
5 hopefully, or in your plate in a narrowly-focused manner
6 because right now the lists just don't do justice in
7 terms of us being able to make an assessment of what we
8 should drop.

9 THE COURT: Okay. Mr. Wood.

12:07PM 10 MR. WOOD: So, Your Honor, last Friday, as we
11 told the Court, we started producing documents we
12 have from the Avaya materials, and we've produced some
13 expert reports, and whatever we -- if we produced an
14 expert report, we also produced their deposition
15 transcript and we produced the exhibits. So we weren't
16 picking and choosing. And we did the whole -- the whole
17 set.

18 And then we also -- two days ago, we did
19 another production and produced the individual
12:08PM 20 transcripts, deposition transcripts and all the exhibits
21 for those transcripts. So -- and these are out of the
22 set that they have requested.

23 We have been trying to have a conversation with
24 them about what's relevant and what's not, and we think
25 a lot of the experts probably aren't relevant.

1 THE COURT: And the Court had asked the parties
2 to meet and confer on this.

3 MR. WOOD: Yes. And, so, when we -- their
4 response to us has simply been we want everything we
5 asked for. So if they're now saying we really want to
6 have a discussion on relevance, we would -- we would
7 welcome that. We would be glad to sit down and go
8 through.

9 We're going to -- we've also now received a
12:09PM 10 response from Nortel Canada, and they have agreed that
11 we can produce documents, the documents that they
12 submitted to the litigation, which I think should clear
13 up a lot of the Nortel issues. We haven't started that
14 process yet. We just got that this -- just a couple of
15 days ago. So -- but, yes, we'd be glad to sit down and
16 go through it with them because we don't -- we think a
17 lot of the things they're asking for aren't relevant.

18 I think we do have an issue. Last time
19 Mr. Prabhakar said they're not interested in source
12:10PM 20 code, and it would -- the source code reports are pretty
21 big in all these, and, so, to look at them and review
22 them is a burden. And if they don't need that, and I
23 think what he said is, well, I didn't really -- I was
24 saying that if there wasn't permission. But our
25 understanding of that, that wasn't really necessary. So

1 we -- that would be a big help for us if we can leave
2 that -- those source code reports out for someone else's
3 source code. So -- I mean, it was SNMP Research source
4 code in someone else's product is what they're related
5 to.

6 So, we're happy to sit down and go through the
7 remaining stuff and produce, but we've already -- we've
8 already started the process. We just haven't gotten any
9 agreement. So we've just picked what we thought was
12:11PM 10 relevant and then we'll have to discuss the rest.

11 THE COURT: Okay. Well, it sounds like there
12 does need to be some more discussions on this to try to
13 narrow whatever issues there may be with regard to this
14 production. So continue that and have that discussion;
15 the relevancy as well.

16 MR. WOOD: Okay.

17 MR. PRABHAKAR: Yes, Your Honor. And, really,
18 the question, Your Honor, is the information asymmetry.
19 So, if it was clear from the list what the report
12:11PM 20 relates to, it would have made life much easier in terms
21 of dropping our demands.

22 On the source code side, Your Honor, I don't
23 want to rehash what I said at the last hearing because
24 the transcript speaks for itself, but I have talked to
25 Avaya's in-house counsel, I have talked to Nortel's

1 outside counsel, and both of them have told me about
2 source code that those expert reports, the majority of
3 the source code in those expert reports was SNMP
4 Research's source code that also relates to the
5 registered copyrights because it's the same copyrights
6 that were at issue in both cases.

7 And I can -- based on the source code expert
8 report that even we have received, it bears out that
9 their source code expert has been focused on SNMP
12:12PM 10 Research source code in our products. There isn't
11 free-ranging discussion of source code of our products
12 that has nothing to do with SNMP Research or that
13 Extreme independently developed.

14 So, if it's their source code, then that's
15 really relevant to this litigation because it's the same
16 registration. So I wanted to give Your Honor some
17 comfort that it's not that I'm changing my position in a
18 way that I'm asking for something that I had given up
19 before because the last time the concern was that we're
12:13PM 20 not asking for production of third-party source code.
21 But, in this case, it even looks like the third parties
22 are not concerned about production of their source code
23 since it's so dated, particularly the Nortel stuff.

24 THE COURT: So how -- but you have -- but
25 Mr. Wood is getting that. I'm trying to figure out the

1 avenue for getting this information. Are you asking
2 Mr. Wood to get it?

3 MR. PRABHAKAR: He is the only person who has
4 it, Your Honor, at this point in time because we just
5 have a list, and the list which we sent to the Court
6 just reads like -- you know, for example, I'll just put
7 it up so that --

8 THE COURT: I understand. But you said you've
9 talked with their counsel. They're okay with that?

12:13PM 10 MR. PRABHAKAR: Yeah. And I told them -- and,
11 in fact, Avaya's counsel sent an e-mail to them saying
12 everything that was in their list, including source
13 code, we're okay with that.

14 THE COURT: Okay. Is there any problem then
15 from your standpoint, Mr. Wood, if their counsel has
16 said it's fine?

17 MR. WOOD: No, we can produce it. I think it
18 still just goes back to the relevance and burden
19 question.

20 THE COURT: How much of a burden is it if you
21 already have it?

22 MR. WOOD: Well, they're still going through
23 it. I mean, to produce -- it was probably -- each
24 production that we made in the Avaya stuff was a day to
25 go through the documents. We did find some privileged

1 materials in there because they were our files that we
2 had. So there were some other things in there. So, I
3 mean, we have to go through the documents. It's not
4 like we just have it and we just give it to them. I
5 mean, we need to go through it and actually do the
6 production process.

7 So -- and the source code reports are pretty
8 big and they have a lot of extra files. So they would
9 be some of the more burdensome ones to produce. And if
12:14PM 10 they're not important to the litigation, I think
11 Mr. Prabhakar last time was willing to say, I don't need
12 that; I just want the other stuff. So, if that's the
13 least important, then we would not do it because of the
14 burden because we've got a lot of other things to do.

15 MR. PRABHAKAR: We're fine with production in
16 PDF format instead of going through the whole process
17 where they would convert it to an image or whatever.
18 Produce them in PDF if that reduces the burden because
19 of the size of the document.

12:15PM 20 MR. WOOD: It's not the physical production
21 process; it's the reviewing of the documents, making
22 sure we've looked at it and we know what's in there,
23 there is not something else in there, there is not some
24 attorney notes or something like that.

25 THE COURT: And you said you found some

1 privileged material in looking through some?

2 MR. WOOD: Yes.

3 MR. PRABHAKAR: I mean, if -- that may be
4 related to the way they have organized their documents.
5 But I don't understand how a report that's been
6 submitted in a case would have privileged information
7 unless --

8 MR. WOOD: Well, because it was in our files.

9 THE COURT: Don't talk over each other. We
10 have a court reporter.

11 So, I would have the same questions because I
12 don't have the full understanding of that. So you all
13 need to discuss this further. Share your conversations
14 that you've had with counsel with Mr. Wood and let
15 Mr. Wood explain to you, like, what he would have to go
16 through. You can have the relevancy discussions and
17 then see where you get --

18 MR. PRABHAKAR: Yes, Your Honor.

19 THE COURT: -- with that.

20 MR. LEE: Your Honor, on the relevancy
21 discussions, I mean, I've participated in already one
22 meet and confer on this, and the problem -- and
23 Mr. Prabhakar is very smart, smarter than I am, about
24 the asymmetrical aspect of the information that's
25 available. And what I mean -- or what I understand that

1 to be is: We get on a meet-and-confer call and we go
2 through this list, and they say, explain to us how this
3 is relevant, and we're looking at this list. I can't
4 tell what it is. It's very hard for us to explain the
5 relevance because we're looking in the dark here. And
6 that's why we're asking, look, you guys are looking at
7 this; tell us what you think is clearly irrelevant here
8 and why and then we will narrow down the universe in
9 which we can do this. But this back and forth, you tell
12:17PM 10 me why it's relevant; I can't; you tell me why you think
11 it's irrelevant, we're just talking loops around each
12 other.

13 THE COURT: And, well, what I heard today
14 Mr. Wood say is you haven't had that discussion yet.

15 MR. PRABHAKAR: Actually, Your Honor, we did,
16 and I think it's in the report that we submitted to the
17 Court where we just asked them, why don't you tell us
18 what you're producing and then that limits the universe
19 of what we have to discuss, and they wouldn't give us
12:17PM 20 that list.

21 They have produced some documents, but I don't
22 know if the production's complete, so that it would be
23 helpful to actually meet and confer about stuff that
24 they think they don't want to produce because of burden
25 or irrelevance. And that's the information that's been

1 lacking from our end because we identified what we
2 thought was relevant based on the list that was provided
3 based on some additional research that we did in those
4 dockets.

5 So, really, I think we've kind of done our
6 diligence. But I understand we need to discuss with
7 Mr. Wood. But what Mr. Lee said was really that we
8 can't set forth any more on relevance than we already
9 have, and we need information from them and we need
12:18PM 10 cooperation from them so that if we ask them, okay,
11 which ones are you now producing and the next time
12 you're producing any so we don't waste time discussing
13 that.

14 THE COURT: Can you all meet in person on that
15 and go through the sheet?

16 MR. WOOD: Yes, we'll be glad to talk to them
17 about what we think is relevant and not relevant, Your
18 Honor, and then --

19 THE COURT: Okay. And I think you all need to
12:18PM 20 do that in person and not over the phone.

21 MR. WOOD: Okay.

22 THE COURT: Okay. Let me take just a
23 five-minute recess and make sure there is not anything
24 else I need to address with the parties. So, I'll be
25 right back. We'll stand in a brief recess.

1 THE COURTROOM DEPUTY: All rise. This
2 honorable court stands in recess.

3 (A brief recess was taken.)

4 THE COURTROOM DEPUTY: Please be seated. This
5 court is again in session. Please come to order.

6 THE COURT: So, the only thing that I wanted to
7 advise the parties with, I guess, a potential discovery
8 dispute that may be forthcoming that Mr. Prabhakar
9 mentioned, include that, the status of your discussions
10 on that in that report that the Court is to receive next
11 Wednesday. I'll look at that. And then if it's
12 necessary to get the parties together, I'll
13 have -- we'll reach out to you at that time to schedule
14 a date for that. Because Mr. Prabhakar was asking for a
15 date, but given some stuff I have on my calendar, I'll
16 just -- I'll need to reach out to you just to schedule
17 that once I know what I'm dealing with or need to
18 address.

19 MR. PRABHAKAR: Yes, Your Honor. And I
20 appreciate Your Honor's -- the willingness to indulge my
21 requests a lot, but I also know from both your calendar
22 and Mr. Lee how much you have on your plate. I just
23 want you to know I know that and I acknowledge that. So
24 I'm very grateful for what we get from you.

25 THE COURT: And I'm happy to try to resolve

1 these. So I'll see what we're dealing with next week
2 and where we're at.

3 Okay. So, thank you all for coming in today.
4 I hope you all have some fruitful discussions this
5 afternoon so you can start getting your case ready to be
6 tried. All right. Thank you.

7 MR. WOOD: Thank you, Your Honor.

8 MR. PRABHAKAR: Thank you, Your Honor.

9 THE COURTROOM DEPUTY: All rise. This
12:30PM 10 honorable court is adjourned.

11 (Which were all the proceedings had and
12 herein transcribed.)

13 * * * * *

14

15

16

17

18

19

20

21

22

23

24

25

1 C-E-R-T-I-F-I-C-A-T-E

2 STATE OF TENNESSEE

3 COUNTY OF KNOX

4 I, Teresa S. Grandchamp, RMR, CRR, do hereby
5 certify that I reported in machine shorthand the above
6 proceedings; that the foregoing pages were transcribed
7 under my personal supervision and constitute a true and
8 accurate record of the proceedings.

9 I further certify that I am not an attorney or
10 counsel of any of the parties, nor an employee or
11 relative of any attorney or counsel connected with the
12 action, nor financially interested in the action.

13 Transcript completed and signed on Monday,
14 April 14, 2024.

15
16
17
18


20 TERESA S. GRANDCHAMP, RMR, CRR
21 Official Court Reporter

22

23

24

25